

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

RICKKE LEON GREEN,)	
)	
Petitioner,)	
)	
v.)	Case No. CIV-05-1276-L
)	
JOHN W. WHETSEL,)	
)	
Respondent.)	

ORDER

This matter is before the court for review of the Report and Recommendation entered by United States Magistrate Judge Doyle W. Argo on November 30, 2005 in this action brought by petitioner, a state prisoner appearing *pro se*. The Magistrate Judge recommends that the petition be dismissed upon filing.

The court file reflects that no party has filed a written objection to the Report and Recommendation within the time limits allowed, although petitioner did file an "Application of Notice of Interference with First Amendment Constitutional Right of Access to This Federal Court" [**Doc. No. 11**]. The court has carefully reviewed this document and finds that it contains nothing that would alter the well-supported conclusion of the Magistrate Judge that plaintiff's petition should be dismissed pursuant to the Younger abstention doctrine which provides

that federal courts should abstain from the exercise of jurisdiction if the issues raised in the petition may be resolved either by trial on the merits in state court or by other available state procedures. Report and Recommendation, p. 5, *citing* Capps v. Sullivan, 13 F.3d 350, 354 n. 2 (10th Cir. 1993) and Younger v. Harris, 401 U.S. 37, 44-45 (1971). As noted by the Magistrate Judge by his reference to publicly available court records, petitioner's direct appeal on his criminal conviction is currently pending before the Oklahoma Court of Criminal Appeals. Thus, he "has adequate state remedies available to him and he presents no exceptional circumstances that warrant application of an exception to Younger and interference with his appellate proceedings." Report and Recommendation, p. 7, footnote omitted. Because of the uncontroverted court records and the unmistakable conclusion of the Magistrate Judge that petitioner's claims fall squarely within the parameters of Younger, the court finds in the exercise of its discretion that plaintiff's "Application for Access to a Law Library" [**Doc. No. 14**] in order to prepare an objection should be and is hereby **DENIED**.

Having conducted a *de novo* review of the matter, the court finds that the Report and Recommendation should be adopted in its entirety. Accordingly, the action should be **DISMISSED upon filing**. In keeping with the recommendations of the Magistrate Judge, petitioner's objection to order reassigning case [**Doc. No. 8**] and his application for preliminary injunction [**Doc. No. 9**] are **DENIED**.

Judgment will issue on a separate document in accordance with the Federal Rules of Civil Procedure.

It is so ordered this 30th day of January, 2006.



TIM LEONARD
United States District Judge